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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAYCOB TYLER KUTZERA,

Defendant.

Case No. CR-17-48-GF-BMM

**DEFENDANT'S RESPONSE TO
GOVERNMENT'S FIRST
MOTION *IN LIMINE***

COMES NOW, Jaycob Tyler Kutzera, by and through his Counsel Evangelo Arvanetes, Assistant Federal Defender, and the Federal Defenders of Montana, and respectfully responds to the Government's First Motion *in Limine*. (Doc. 23).

- As to Government's request #1 concerning the protective order, Mr. Kutzera has no objection.
- As to Government's request #2 concerning evidence relating to victim's other sexually explicit communications with anyone other than Mr.

Kutzera, Mr. Kutzera respectfully objects. This victim was not a cyber-naif. During her interview with law enforcement, she admitted to talking to other guys while she chatted with Mr. Kutzera, and even admitted further that she was exchanging sexually explicit photos with another male. Testimony concerning this topic could be fashioned by the Court to limit any undue prejudice while also ensuring the jury is aware that Mr. Kutzera was not her first and only person to talk to her thereby making Mr. Kutzera out to be a sexual predator.

- As to Government's request #3 concerning sexual history under FRE 412, Mr. Kutzera has no objection.
- As to Government's request #4 concerning victim's alleged consent, Mr. Kutzera respectfully objects to this request. It is imperative to Mr. Kutzera's defense that the jury know that the victim was already trolling for other presumably males in an adult on-line chat room when she came upon Mr. Kutzera. She clearly was actively engaged in this behavior and clearly was seeking out others to chat with. The Court may certainly limit the scope of questioning by Mr. Kutzera's counsel, the undersigned, to the victim when she testifies.
- As to Government's request #5 concerning the victim's psychological history or records, Mr. Kutzera has no objection.
- As to Government's request #6 concerning the potential punishment or specific-instance character evidence, it is a two-fold question which requires a two-fold answer.
 - First, as to punishment, Mr. Kutzera will not take a specific position until he is able to research this issue further. If there is a jury instruction request by Mr. Kutzera with regard to this issue, Mr. Kutzera will submit the instruction in a timely manner or at a time prior pursuant to Court order.
 - Second, as to specific-instance character evidence, the undersigned is well aware of the Federal Rules with regard to this issue and will keep it in mind as an officer of the court if an issue

within this context arises. At this time, Mr. Kutzera does not intend to bring any specific character evidence to the jury.

WHEREFORE, Mr. Kutzera respectfully responds to the Government's First Motion *In Limine*. (Doc. 23).

RESPECTFULLY SUBMITTED this 28th day of November, 2017.

/s/ Evangelo Arvanetes

CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that on November 28, 2017, a copy of the foregoing document was served on the following persons by the following means:

1, 2 CM-ECF
 Hand Delivery
 3 Mail
 Overnight Delivery Service
 Fax
 E-Mail

1. CLERK, UNITED STATES DISTRICT COURT
2. CYNDEE L. PETERSON
Assistant United States Attorney
United States Attorney's Office
Counsel for the United States of America
3. JAYCOB TYLER KUTZERA
Defendant

/s/ Evangelo Arvanetes